UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

ARB, INC.

Employer

and Case 21-RC-20642

SOUTHERN CALIFORNIA DISTRICT
COUNCIL OF LABORERS AND ITS
AFFILIATED LOCAL UNIONS,
LABORERS INTERNATIONAL UNION
OF NORTH AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. At the time of the hearing, the Petitioner was the recognized representative of certain employees of the Employer, under Section 8(f) of the National Labor Relations Act. Inasmuch as the Employer refused to stipulate at hearing that the Petitioner is a labor organization within the meaning of the Act, the Petitioner's status as a labor organization is at issue.[1]

Section 2(5) of the National Labor Relations Act states:

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Thus, only three requirements must be met to establish the status of a labor organization under the Act. First, it must be an organization or group of any kind. Second, employees must participate in the organization. Third, the organization must exist, at least in part, to deal

[1] The Employer, however, did not address this issue in its brief.

with employers concerning wages, hours or other working conditions. Autozone, Inc., 315 NLRB 115, 116 (1994).

The record reveals that the Petitioner is an organization in which employees participate through the various local unions, and that the Petitioner exists, at least in part, to deal with employers concerning grievances, rates of pay and other terms and conditions of employment. In this regard, the record discloses that the Petitioner's functions include negotiating wages, fringe benefits, and other terms and conditions of employment for members of the affiliated local unions. Employees, through their local unions, select delegates to the Southern California District Council of Laborers, and local union representatives participate in negotiating committees with the Southern California District Council of Laborers to negotiate collective-bargaining agreements for the geographic territories of the affiliated local unions.[2]

Based upon the above, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and that it claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within

the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the Employer performing work covered by the Southern California Master Labor Agreement and the Laborers' Utility Master Agreement, at and out of the Employer's facility located at 26000 Commercentre Drive, Lake Forest, California, in the counties of Los Angeles, Inyo, Mono, Orange, Riverside, San Bernardino, Imperial, Ventura, Santa Barbara, San Luis Obispo, Kern and, in addition, Richardson Rock, Arch Rock, Santa Cruz Island, San Nicholas Island, Santa Catalina Island, San Miguel Island, Santa Barbara Island, San Clemente Island, Santa Rosa Island and Anacapa Island, including the Channel Islands Monument; excluding all other employees, office clerical employees, professional employees, civil engineers and their helpers, superintendents, assistant superintendents, master mechanics, messengers, guards and supervisors as defined in the Act.

ISSUES AND CONCLUSIONS

The primary issue here is whether the unit sought by the Petitioner is appropriate for collective bargaining. The Petitioner and Employer have been signatory to two Section 8(f) agreements covering work in Southern California: the Southern California Laborers Master Labor Agreement (MLA) and the Laborers' Utility Master Agreement (UMA). The Petitioner

[2] Local Laborers Unions are required to affiliate with the District Council in their region.

and Employer have been signatory to the MLA for at least about the last 30 years, and to the UMA for at least about the last 10 years. The Employer, for at least about the last 30 years, has been signatory to the National Pipe Line Agreement (NPA) with the Laborers' International Union of North America (LIUNA). The NPA covers work throughout the United States. The Petitioner now seeks certification as the Section 9(a) representative in a unit composed of the Employer's employees covered by the MLA and the UMA.[3] The Employer contends that the petitioned-for unit is inappropriate, and that the appropriate unit must also include those of its employees covered by the NPA. In the alternative, the Employer asserts that the appropriate unit should at least include those employees working under the NPA in Southern California. The Employer further contends that should the unit found appropriate include the employees covered by the NPA, LIUNA should be considered a joint petitioner and afforded an opportunity to participate in this matter.[4]

For the reasons noted below, I find that that the petitioned-for unit is an appropriate unit and I shall direct

[3] At hearing, the Petitioner amended its petition to seek those employees covered by both the MLA and the UMA.

[4] In its brief, the Petitioner asserts that the directed election should be conducted by mail ballot. The question of whether a mail ballot election is warranted in this matter will not be determined herein but will be resolved administratively by the undersigned following the issuance of this Decision.

an election in a unit composed of employees performing work covered by the MLA and the UMA.

UNIT ISSUE

A. Board Standards

In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. P.J. Dick Contracting, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." A petitioner must demonstrate that the employees in the petitioned-for unit share a sufficient "community of interest" so as to constitute an appropriate bargaining unit. Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). To assess whether employees share such a community of interest, the Board weighs a variety of factors, including:

> [S]imilarity in methods of work or compensation, similar hours of work, employment benefits, common supervision, similar qualifications, training and skills, similarity in job functions and the location where job duties are performed, the amount of interaction and contact with other employees, integration and interchange of work functions with other employees and the history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

B. The Employer's Operation

The Employer is a California corporation engaged in the provision of construction, fabrication, and maintenance services, including underground pipeline, communications and electrical conduit work. The Employer has a facility in Lake Forest, California, and performs work throughout Southern California that is covered by the Master Labor Agreement and the Utility Master Agreement. Under the NPA, the Employer performs work in Southern California, as well as in 8 to 10 Western states outside California.[5]

The type of work performed under the three contracts is similar in that it generally involves underground work using the same skills and equipment. Work under the MLA and UMA, however, involves smaller pipeline work for distribution while work under the NPA involves larger pipeline work, both in terms of diameter and distance, for the transmission of products, such as gas and oil, from one region to another. Transmission work in Southern California and elsewhere is handled under the NPA. Local pipeline distribution work, including the underground installation of conduit and pre-cast structures for the distribution of electrical and communications services to homes and businesses, is covered by the MLA or UMA.

[5] At the time of the hearing, the Employer had ongoing

C. Facts and Analysis Concerning the Community of Interest

The record reveals that employees working under the MLA and UMA share almost identical terms and conditions of employment and, accordingly, share a community of interest sufficient to establish an appropriate unit. While employees working under the UMA, MLA and NPA share similar qualifications, training and skills, the differences for employees under the NPA in methods of compensation, employment benefits, location of job duties and bargaining history warrant their exclusion from the appropriate unit.

Employees working under the MLA and UMA generally perform the same type of work and have the same skills and training. In addition, these employees are subject to the same work rules, work in the same geographic area, and share the same hiring and dispute resolution procedures under the MLA and UMA.

Since the UMA was developed to more effectively compete with non-union contractors performing utility work, pay rates are slightly lower than those provided for in the

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projects in Washington and Nevada under the NPA.

MLA.[6] The pay rates and fringe benefits contributions under the MLA and UMA do not vary by region. Fringe benefit contributions under the MLA and the UMA are submitted to the appropriate Southern California Trust Funds, such as the Laborers' Health and Welfare Trust Fund for Southern California and the Construction Laborers' Pension Trust Fund for Southern California.

Since work under the NPA involves the same skills and training as that under the UMA and MLA, employees who work under the UMA and MLA may also work under the NPA. The NPA, though, covers work nationwide, and working conditions under that agreement have developed through a separate bargaining history with LIUNA. Those employees working under the NPA, which covers larger transmission work and has a much wider geographic scope, are subject to different compensation, benefits and hiring procedures.

The MLA and UMA have identical referral procedures. Under the NPA, however, the Employer is permitted to directly hire approximately 50 percent of the first 30 employees hired for a job, and to directly hire 40 percent of those hired after the 31st employee is hired. Neither the MLA nor the UMA have any such provision.

[6] Some employees performing work under the UMA were "grandfathered" under the MLA and are paid MLA rates for such work.

For projects outside Southern California under the NPA, the Employer brings some "key" employees and supervisors from Southern California. The Employer also hires laborers local to the particular project area for jobs outside Southern California.

Under the NPA, pay rates and fringe benefits contributions vary by zone within California and by zone and state outside California. Fringe benefits contributions pursuant to the NPA are not submitted to the Southern California Trust Funds but to the Laborers-Employers Benefit Plan Collection Trust.

Accordingly, while employees working under all three agreements share similar qualifications, training and skills, I find that the overwhelming community of interest shared among employees working under the MLA and UMA, as well as the above-noted differences under the NPA, establish that the petitioned-for unit is an appropriate unit.

D. The Employer's Contentions

In its brief, the Employer contends that the petitioned-for unit seeks to splinter the traditional craft unit by including only some of the laborers employed by the Employer in Southern California, and that, in this situation, where employees perform traditional craft laborers work under the MLA, UMA and NPA in Southern California and elsewhere, the

wider geographic scope should be considered. The separate bargaining history under the NPA, however, weighs strongly against such a finding. In this regard, as noted above, the Employer has been signatory to the NPA with LIUNA, and to the MLA with the Petitioner, for at least the past 30 years. Thus, there is a long history of these employees being covered by separate agreements in separate units.

The Employer further contends that the factors outlined by the Board in Dezcon, Inc., supra, concerning a single employer with more than one location, favor a unit composed of employees working under all three agreements. In that case, the Board found the following factors particularly relevant when faced with a multi-location employer: bargaining history; functional integration of operations; similarity of skills, duties and working conditions; centralization of labor relations and supervision, particularly with respect to hiring, discipline and control of day-to-day operations; and interchange of employees among construction sites. Dezcon, Inc., supra, at 111. The record evidence concerning many of these factors is insufficient to support such a finding. There is little evidence concerning the functional integration of the Employer's operations, although it appears that projects may be ongoing under one or all three agreements at any given time. Although the record discloses that the

Employer's president, Brian Pratt, is ultimately responsible for labor relations under all three agreements, there is little record evidence concerning supervision and control of the day-to-day operations under the three agreements. Finally, there is scant evidence concerning employee interchange among construction sites. In the one example provided, about 30 percent of approximately 100 laborers who worked on a project for the Employer under the NPA had previously worked for the Employer under the MLA or the UMA. Moreover, for the reasons noted above concerning different bargaining history, working conditions and hiring procedures, I find that the factors discussed in Dezcon weigh against including employees performing work under the NPA. Accordingly, the Employer's argument in this regard is rejected.

In support of its view that the appropriate unit should include work performed under the NPA outside California, the Employer, citing Exxon Company, U.S.A.,[7] notes that the Board has found multi-state bargaining units appropriate in other cases. In Exxon Company, the Board found appropriate the petitioned-for unit of employees at the employer's retail stores in a geographic area that included three states and the District of Columbia. The Board rejected

[7] Exxon Company, U.S.A., 221 NLRB 1014 (1975).

the employer's contention that the only appropriate multi-store unit must include all such stores in its eastern region, which included all or parts of four other states. The Board found that, notwithstanding similarities in wages, benefits and work rules throughout the eastern region, there was sufficient autonomy over day-to-day working conditions at the retail stores to warrant a finding that the less than region-wide unit was appropriate.

Thus, although a multi-state unit may be appropriate in certain circumstances, other factors are also considered in determining the scope of an appropriate unit. I do not, however, reject the Employer’s contention that the appropriate unit must include those employees working under the NPA on the basis that a multi-state unit is inappropriate. Rather, for the reasons set forth above concerning the strong community of interest shared among employees working under the MLA and UMA, and the relevant differences under the NPA, of which geography is only one factor, I find the petitioned-for unit appropriate.

The Employer further contends that should I find that employees working on out-of-state projects under the NPA do not share a community of interest sufficient to warrant their inclusion in the unit, I should at least include those employees working under the NPA who have performed work in

Southern California under any of the three agreements pursuant to the Daniel Construction formula.[8] The Daniel Construction formula establishes the voting eligibility of employees in the unit who have been employed for the requisite number of days in the time period specified. Eligible employees must be in the unit. Daniel Construction, supra, at 267. As noted above, my finding concerning the appropriate unit is not based solely on job location. While there may be employees working under the NPA who are eligible to vote in the election under the Daniel Construction formula based upon their previous work under the MLA or UMA, work performed under the NPA, which is not in the unit found appropriate, shall not be included in determining their eligibility. The Employer's argument in this regard is rejected.

Accordingly, based on the above-noted considerations and the record as a whole, I find that the petitioned-for unit of all employees employed by the Employer under the Southern California Master Labor Agreement and the Laborers' Utility Master Agreement is an appropriate unit for collective bargaining.

There are approximately 190 employees in the unit.

JOINT PETITIONER ISSUE

[8] Daniel Construction Co., 133 NLRB 264 (1961). The parties stipulated at hearing that eligibility formula under Daniel Construction is appropriate for the election in this matter.

Having found the petitioned-for unit of employees working under the MLA and UMA appropriate, it is unnecessary to determine whether LIUNA should be considered a joint petitioner in this matter. Moreover, LIUNA authorized Petitioner's counsel to represent their interest in this matter at hearing and stated that it has no interest in the petitioned-for unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. In addition, eligible are those employees in the unit who have been employed for a total of 30 working days or more within the 12 months immediately preceding the eligibility date, or who have had some employment in that period and who have been employed 45 working days or more within the 24-month period immediately preceding the eligibility date for the election, and who have

not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Southern California District Council of Laborers and its affiliated Local Unions, Laborers International Union of North America.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company,
394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before
August 12, 2003. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas

conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EST, on August 19, 2003.

DATED at Los Angeles, California, this 5th day of August 2003.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

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177-3925-4000
177-3950-2700
362-3350-6000
401-7550
420-0100
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